

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

ANNUAL COMPLIANCE REPORT, 2014

Docket No. ACR2014

**UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING  
CONTINUED ACCESS TO NON-PUBLIC MATERIALS  
UNDER PROTECTIVE CONDITIONS**

(March 27, 2015)

United Parcel Service, Inc. ("UPS"), a company affiliated with the delivery services industry, respectfully submits this Motion pursuant to Commission Rules 3001.21 and 3007.50, requesting continued access to a subset of the compliance-related non-public materials to which the Commission previously granted UPS's outside counsel and consultants access. See PRC Dkt. No. ACR2014, Order Nos. 2321 & 2326. Specifically, UPS seeks continued access for another 90 days to the library references identified on Exhibit 1 for the same outside counsel and consultants that were granted access to these files in Order Nos. 2321 and 2326.

On January 15, 2015, the Commission granted access to three UPS outside counsel and consultants, under protective conditions, to thirteen of the non-public data files the Postal Service submitted in connection with its Annual Compliance Report. Order No. 2321. On January 16, 2015, the Commission extended this access to ten additional personnel associated with UPS's outside counsel and consultants. Order No. 2326.

UPS's outside counsel and consultants conducted analyses of certain data in these files under the time constraints presented by this docket, and these analyses informed the comments submitted by UPS. See UPS Initial Comments (Feb. 2, 2015). There was simply not sufficient time, however, for UPS's outside counsel and consultants to analyze these data files fully, particularly given the very complex nature of the data.<sup>1</sup>

As expressly contemplated by Rule 3007.50(a), therefore, UPS now seeks "continued access" to a subset of these files. These eight files, identified on Exhibit 1 and discussed further below, are directly related to compliance issues generally (as evidenced by the fact that the Postal Service submitted them as part of its Annual Compliance Report) and they are directly relevant to analyses UPS would like to conduct regarding the Postal Service's compliance with its obligations under 39 U.S.C. § 3633. These analyses, in turn, will inform future comments by UPS regarding next year's Annual Compliance Report and will also inform UPS's forthcoming petition to the Commission on compliance-related issues. See UPS Initial Comments (Feb. 2, 2015), at 3 (noting that "UPS intends to file a petition to initiate a proceeding for a thorough evaluation of the Postal Service's costing methodologies and the analytical principles employed by the Commission pursuant to its obligations under § 3633").<sup>2</sup>

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<sup>1</sup> In addition to the time constraints posed by this docket, UPS also submitted extensive comments involving expert work in the City Carrier Street Time docket, which further limited the time that could be spent analyzing these data files. See Dkt. No. RM2015-7, Initial Comments of UPS and Expert Report of Dr. Neels (Mar. 18, 2015).

<sup>2</sup> It would be inefficient to require UPS to return this data and then to seek access to this very same data only after filing its forthcoming petition. Requiring UPS to follow this inefficient procedure would also diminish the quality of the initial version of the petition presented to the Commission and would cause undue delay and expense.

UPS's outside counsel and consultants will continue to abide by the terms of the protective orders they have executed regarding this data, conditions to which the Postal Service did not object when UPS previously sought access to these very same data files. See PRC Dkt. No. ACR2014, UPS Motion for Access, at 2 (Jan. 9, 2015). Among other things, these protective conditions ensure that the data will not be used for any business or commercial purpose.

Granting UPS's request for continued access is consistent with the Commission's obligations under the Postal Accountability and Enhancement Act ("PAEA"). As the Commission has observed, PAEA "relies on public transparency . . . to achieve its goal of Postal Service accountability." PRC Dkt. No. RM2008-1, Order No. 194, at 2 (March 20, 2009) ("Order No. 194"); see also PRC Dkt. No. RM2008-1, Order No. 225, at 7 n.5 (Jun. 6, 2009) ("Order No. 225"). The Commission has further recognized that "[f]or the public to participate effectively and comment in an ongoing *or upcoming* annual determination of compliance, the Commission anticipates that persons may require access to non-public materials . . . ." Order No. 194 at 6 (emphasis added).

Moreover, and directly relevant here, the Commission recognizes the potential need for *continued* access to non-public materials. Thus, Rule 3007.50(a) expressly allows parties to request "continued access to[] non-public materials relevant to compliance." Rule 3007.50(a). That is precisely what UPS is seeking here. See also Order No. 225, at 17-18 ("[Rule 3007.50] also allows a person who has access subject to protective conditions (under rules 3007.40 or 3007.50) to file a motion to continue access if the materials are relevant to compliance under 39 U.S.C. § 3653. . . . Under

this rule, a person previously granted access to materials may make requests for continuing access to non-public materials.”).

UPS’s initial comments in this proceeding highlight the fact that Postal Service cost attribution procedures deserve close scrutiny to ensure compliance with PAEA and the Commission’s regulations. In addition to UPS’s own comments, many of the other comments filed with the Commission question the accuracy of the Postal Service’s cost attribution methodologies. See, e.g., Initial Comments of Citizens Against Government Waste, at 1 (Feb. 2, 2015) (“CAGW has always been concerned with the practices of the U.S. Postal Service (USPS), particularly the agency’s risky and opaque accounting practices. The true costs of all of the agency’s products are currently not transparent or available.”); Initial Comments of National Taxpayers Union, at 2 (Feb. 2, 2015) (“NTU respectfully calls on the Commission to address the Postal Service’s improper accounting measures for the purposes of repairing its languishing financial position.”); Initial Comments of Progressive Direct Mail Advertising, at 1 (Feb. 2, 2015) (“According to the agency’s own Inspector General, the U.S. Postal Service has no mechanism to track and attribute costs for products accurately. Instead of applying real costs to real products, the Postal Service assigns roughly half of their operating costs to specific products or services and blindly categorizes 45% of costs as overhead.”).

Even the Postal Service has acknowledged that it has paid less attention to cost attribution issues since PAEA was passed than might have been expected. See Dkt. No. ACR2013, Reply Comments of the United States Postal Service, at 12 (Feb. 14, 2014) (“It seems fair to say that a host of matters that have unexpectedly arisen since enactment of the PAEA have led to less ability to focus on attribution issues than might

have been expected.”). Proper cost attribution is one of the most pressing issues facing the Commission, and the Commission’s consideration of this issue will benefit from the ability of UPS’s outside counsel and consultants to closely examine the actual data.

Specifically, UPS seeks to retain the following non-public library references that the Postal Service submitted with its ACR:

- NP-10 Competitive Product Incremental and Group Specific Costs
- NP-11 Non Public CRA
- NP-12 Non Public Cost Segments and Components
- NP-13 Nonpublic CRA Model
- NP-14 CRA B Workpapers
- NP-19 Piggybacks
- NP-20 Mail Processing Costs by Shape
- NP-22 City Carrier Costing System

This is a smaller subset of the original selection of ACR data to which UPS was previously granted access. UPS seeks continued access to these particular library references because they include the data that is most directly relevant to how the Postal Service is (or is not) attributing costs to competitive products. Thus, these library references contain important costing information relevant to the Postal Service’s statutory obligations under 39 U.S.C. § 3633.

NP-10, for example, not only includes the procedure by which the Postal Service calculates incremental costs using its “hybrid” methodology for competitive products, but also includes the methodology by which the Postal Service purports to calculate the incremental inframarginal costs of competitive products. The Commission has expressly recognized the importance and complexity of attributing inframarginal costs. See, e.g., Postal Regulatory Commission Request for Proposals, at 4-6 (May 2014), available at <https://www.fbo.gov/utills/view?id=55d96c36c879f11e0740c24596dabf73>.

And, indeed, this data file (like the others) is extremely complex and requires careful study. Further time is required for meaningful study to occur. NP-11 and NP-12 relate directly to how the Postal Service attributes costs by product and cost segment. Again, these files are highly relevant to important compliance issues, and are very complex. Allowing UPS continued access to these materials outside of the tight time constraints of the ACD process will enable UPS to present a more detailed and helpful analysis to the Commission. The other files identified above are similarly relevant and similarly complex.

UPS reached out to the Postal Service to discuss this request for continued access, but the Postal Service did not identify its position on the request as of the filing of this motion. Postal Service counsel did, however, express some concern about whether the request would be “open-ended.” Accordingly, in an effort to address even any hypothetical concern, UPS is willing to limit its request for continued access to these library references to another 90 days. If, at the expiration of that period, UPS still requires access to the files, UPS will revisit the issue with the Postal Service and the Commission. This reflects UPS’s consistent practice of addressing any legitimate concern by the Postal Service regarding access to data relevant to compliance issues. Under these circumstances, there is no reasonable basis to oppose UPS’s request for continued access to this data, under the protective conditions to which UPS has agreed.

### **CONCLUSION**

For the foregoing reasons, UPS respectfully requests that (1) this Motion for “continued access” to the library references identified on Exhibit 1 be granted under Rule 3007.50(a), and (2) the Commission direct that UPS’s outside counsel and

consultants who have access to this data under Order Nos. 2321 and 2326 be given continued access to this data for 90 days from the date of the Commission's Order.

Respectfully submitted,

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# **Exhibit 1**



NP-10 Competitive Product Incremental and Group Specific Costs

NP-11 Non Public CRA

NP-12 Non Public Cost Segments and Components

NP-13 Nonpublic CRA Model

NP-14 CRA B Workpapers

NP-19 Piggybacks

NP-20 Mail Processing Costs by Shape

NP-22 City Carrier Costing System